

**MEMORANDUM OF UNDERSTANDING**

**ON DEVELOPMENT COOPERATION**

**BETWEEN**

**THE GOVERNMENT OF AUSTRALIA**

**AND**

**THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM**

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The Government of Australia and the Government of the Socialist Republic of Vietnam, wishing to strengthen the existing cordial relations between the two countries and their peoples, have decided as follows:

1. Objective

The two governments will cooperate in a program of development cooperation in conformity with the goals of economic and social development of the Government of Socialist Republic of Vietnam and both governments policies, priorities and practices. The program will emphasise social and economic development in the areas of mutual interest such as:

- (a) economic development which contributes to sustained improvements in quality of life;
- (b) the development of trade and investment opportunities;
- (c) the liberalisation of regional and world trade;
- (d) a shared commitment to regional security; and
- (e) educational and technological exchange.

2. Components of the program of development cooperation

The program of development cooperation may consist of the following components:

- (a) the sending of missions to the Socialist Republic of Vietnam to identify and assess potential development projects;
- (b) the study, development and execution of projects designed to contribute to the attainment of the objective of this Memorandum of Understanding (MOU);
- (c) technical assistance in the study, development and execution of projects;
- (d) the granting of scholarships to nationals of the Socialist Republic of Vietnam for studies and professional training in Australia, the Socialist Republic of Vietnam or a third country;
- (e) the assignment of Australian experts, advisers and other specialists in the Socialist Republic of Vietnam;
- (f) the provision of equipment, materials and other goods and services required for the execution of Australian funded development projects in the Socialist Republic of Vietnam;
- (g) the promotion of collaborative research, designed to assist economic development of the Socialist Republic of Vietnam, between institutions and personnel of Australia and the Socialist Republic of Vietnam;

- (h) the provision of Australian assistance, in the form of both personnel and equipment, in conjunction with development projects in the Socialist Republic of Vietnam of the World Bank or other international financial institutions;
- (i) the provision of Australian assistance, in the form of both personnel and equipment, in conjunction with development projects in the Socialist Republic of Vietnam of the United Nations agencies;
- (j) the provision of assistance to educational universities and other academic institutions in the Socialist Republic of Vietnam to help improve the national capacity for teaching and research;
- (k) the encouragement and promotion of relations between institutions and personnel of the two countries;
- (l) the provision of assistance by Australia utilising the services of Australian non-government organisations;
- (m) the provision of assistance utilising the Development Import Finance Facility;
- (n) the provision of assistance utilising the Private Sector Linkages Program;
- (o) other forms of assistance as may be mutually arranged between the two governments from time to time.

### 3. Definitions

For the purpose of this MOU

- (a) "Australian firms" means Australian firms, institutions, companies, partnerships, associations, statutory authorities, government bodies and other organisations which are engaged in a project in the Socialist Republic of Vietnam to which this MOU applies;
- (b) "Australian personnel" means Australian citizens or permanent residents of Australia or other persons who are not nationals or permanent residents of the Socialist Republic of Vietnam who are working in the Socialist Republic of Vietnam on a project to which this MOU applies and whose salaries or other costs are funded from the contribution to that project by the Government of Australia;
- (c) "dependent" means the spouse and unmarried minor children of a member of the Australian personnel and any other person recognised from time to time as a dependant of a member of the Australian personnel by the two governments;

3.

- (d) "spouse" means husband or wife of a member of the Australian personnel including a defacto husband or wife when their relationship demonstrates the essential characteristics of a marriage including:
  - (i) an intention on the part of both concerned that the relationship continue indefinitely;
  - (ii) a requirement that the couple regard themselves as defacto husband and wife; and
  - (iii) a demonstrated past stability;
- (e) "personal, professional and technical material" means equipment and other goods imported by Australian personnel or Australian firms for their professional use while engaged in a project to which this MOU applies;
- (f) "project" means a development cooperation program or project arranged under this MOU;
- (g) "project supplies" means equipment, material and supplies provided for a project to which this MOU applies, the cost of which is funded from a contribution by the Government of Australia;
- (h) "scholarship holders" means nationals of the Socialist Republic of Vietnam who, having been nominated by the Government of the Socialist Republic of Vietnam, are sponsored by the Government of Australia for training in Australia, the Socialist Republic of Vietnam or a third country;
- (i) "Contractor" means the Australian firm engaged by the Government of Australia to manage the contribution by the Government of Australia to a project arranged under this MOU;
- (j) "implementing agency" means the agency of the Government of the Socialist Republic of Vietnam directly responsible for implementation of a project arranged under this MOU; and
- (k) "Australian Team Leader" means the person appointed by the Government of Australia to coordinate and manage the contribution to a project arranged under this MOU by the Government of Australia.

4. Coordinating agencies

1. Each government will coordinate development assistance projects under this MOU through one or more designated cooperating agencies.

2. In the implementation of this MOU the Australian International Development Assistance Bureau (referred to as AIDAB) shall be competent to represent the Government of Australia and the State Planning Committee (referred to as the SPC) shall be competent to represent the Government of the Socialist Republic of Vietnam unless either government designates another competent authority and so notifies the other government.
3. The two governments will consult from time to time at the request of either government to coordinate the implementation by the cooperating agencies of the program of development co-operation.

#### 5. Subsidiary arrangements

In support of the objective of this MOU, each cooperating agency of each government may conclude with the designated coordinating agency of the other government subsidiary arrangements on specific development activities. Subsidiary arrangements will make specific reference to this MOU.

#### 6. Responsibilities of the Government of Australia

1. Unless otherwise indicated in subsidiary arrangements the contribution of the Government of Australia for development activities arranged under this MOU will include, but not be limited to, the following:
  - (a) professional technical and other services required for the execution of development projects;
  - (b) project supplies and the cost of transportation of project supplies to the point of entry into the Socialist Republic of Vietnam;
  - (c) the following contributions related to scholarship holders of the Socialist Republic of Vietnam studying outside the Socialist Republic of Vietnam;
    - (i) registration and tuition fees;
    - (ii) book and equipment allowance;
    - (iii) a living allowance, including provision for accommodation costs and a clothing allowance;
    - (iv) medical and hospital expenses;
    - (v) economy-class fares for international or domestic travel to and from the place of study by air or any other approved means of transportation, in compliance with the requirements of the scholarship program;

5.

- (vi) cost of shipping of the personal effects to and from the place of study; and
- (vii) other associated costs in relation to student scholarships and training awards; and
- (d) the following contributions related to Australian personnel;
  - (i) their salaries, fees, allowances, travel expenses and other benefits;
  - (ii) the cost of shipping, between their normal place of residence and the port of entry and departure in the Socialist Republic of Vietnam, of their personal and household effects, including professional and technical materials; and
  - (iii) endeavour to train and adequately prepare the personnel for their duties in the Socialist Republic of Vietnam where possible in the form of orientation before and during assignments.

- 2. The Government of Australia will provide the Government of the Socialist Republic of Vietnam in a timely manner with the names and detailed job descriptions of the Australian personnel and their dependants entitled to the rights and privileges set forth in this MOU.
- 3. The Government of the Socialist Republic of Vietnam may request the recall or replacement of any personnel made available by Australia whose work or conduct is deemed unsatisfactory. Before deciding such request, the Government of the Socialist Republic of Vietnam shall consult with the Government of Australia.
- 4. The Government of Australia may recall any personnel. Before deciding on recall, the Government of Australia will consult with the Government of the Socialist Republic of Vietnam in the matter as well as on arrangements for ensuring early replacement of recalled personnel.
- 7. Responsibilities of the Government of the Socialist Republic of Vietnam
  - 1. Unless otherwise indicated in subsidiary arrangements the contributions of the Government of the Socialist Republic of Vietnam, in accordance with the laws and regulations in force in the Socialist Republic of Vietnam, will include, but not be limited to the following:
    - (a) transportation within the Socialist Republic of Vietnam in accordance with the requirements of projects arranged under this MOU;

- (b) facilitating the travel within the Socialist Republic of Vietnam of Australian personnel in the performance of their duties subject to prior permission by the Vietnamese authority concerned and to be accompanied by Vietnamese counterparts;
- (c) measures required to protect the project supplies referred to in paragraph XIII of this MOU against natural elements, theft, fire and other hazards;
- (d) permits, licences and other documents necessary to enable Australian firms, Australian personnel and their families to carry out their functions in the Socialist Republic of Vietnam;
- (e) visas for the Australian personnel and their dependents, including;
  - (i) long-term laissez-passer to permit unrestricted access to work sites and accommodation in accordance with existing law and regulations;
  - (ii) in cases of emergency medical evacuation, permission to cross into a third country at convenient border points close to project sites; and
  - (iii) multiple exit and re-entry visas which will be valid for one year or for the duration of their assignment to a project in the Socialist Republic of Vietnam, but not more than one year.
- (f) permits for the import and export of professional and technical material, and of the personal and household effects of Australian personnel and their dependants in accordance with existing law and regulations of Vietnamese customs.
- (g) facilitating the issue of all documentation required for the entry and exit of family members accompanying or visiting Australian personnel during the period of the personnel's assignment to the project;
- (h) permission to use means of communication in the Socialist Republic of Vietnam appropriate to the development projects involved subject to the relevant regulations;
- (i) making available on a continuous basis suitably qualified counterpart staff required by projects arranged under this MOU;



- (j) provision of furnished office premises and office services on the sites of development projects where such premises and services are needed by Australian firms and Australian personnel to carry out their duties;
  - (k) provision of reports, records, maps, statistics and other information related to projects arranged under this MOU and likely to assist Australian personnel in carrying out their duties in accordance with the Vietnamese existing regulations; and
  - (l) other measures within the jurisdiction of the Government of the Socialist Republic of Vietnam which may facilitate the execution of projects arranged under this MOU.
2. The Government of the Socialist Republic of Vietnam will ensure that all scholarship holders who are government officials will continue to receive their appropriate salary, mutually decided costs of travel, living allowances and other associated costs in relation to student scholarships and training awards, in accordance with the procedures and regulations of the Socialist Republic of Vietnam during their studies or professional training.

## **8. Joint Project Coordination Committee**

1. Responsibility for the overall policy development, planning, coordination, monitoring and direction of a project, where it is deemed appropriate, will be vested in a Joint Project Coordination Committee which will undertake the following functions, subject to the specific requirements of the project:
- (a) coordinate policy for the project;
  - (b) review and report periodically on progress of work plans and budgets to the two governments;
  - (c) recommend to the two governments any appropriate changes in the project including budget and future development consistent with the annual work plans and budgets decided by the two governments;
  - (d) prepare a brief report identifying problems and recommending actions, for forwarding to the Australian Embassy in Hanoi and the State Planning Committee;
  - (e) coordination and disposition of project personnel;

- (f) as required, meet with representatives of the two governments to report on project progress and outstanding issues, to recommend actions to facilitate progress and to achieve project objectives. The structuring of such meetings and the recording of decisions taken will be the responsibility of the nominee designated by the Australian Embassy in Hanoi; and
- (g) undertake such other functions as may be set out in subsidiary arrangements between the two cooperating authorities.

2. The Joint Project Coordination Committee will include:

- (a) the head of the body or authority designated by the Government of the Socialist Republic of Vietnam as the implementing agency;
- (b) the Australian Team Leader appointed by the Government of Australia in consultation with the Government of the Socialist Republic of Vietnam;
- (c) and a person nominated by the Australian Embassy in Hanoi.

- 2. The Joint Project Coordination Committee will meet not less than twice per year.
- 3. Responsibility for efficient management of a project will be vested in the head of the implementing agency, who will prepare regular reports to the governments on progress of the project.
- 4. An annual work plan will be prepared by the Project Coordination Committee for consideration by both governments. The document in draft form, will be prepared by 31 March each year and provide detailed information on activities to be undertaken, budgets, equipment and material purchases and personnel deployment for the following July to June period.
- 5. Final responsibility for the implementation of decided projects rests with the Government of the Socialist Republic of Vietnam.

9. Monitoring

Progress monitoring within each Australian financial year will be undertaken by the Australian Government through the Australian Embassy on a regular basis through project visits. The Australian Embassy will supply reports on project visits to AIDAB Canberra and to the Joint Project Coordination Committee.

## 10. Review and Evaluation

A review and evaluation of project progress may be made at times arranged between, and mutually convenient to, the two governments. Such a review or evaluation will be undertaken by a joint team appointed by the two governments comprising personnel independent of staff involved in the project.

## 11. Claims

1. The Government of the Socialist Republic of Vietnam acknowledges that it will not hold the Government of Australia in any way liable or responsible for the actions of Australian firms and Australian personnel.
2. The Government of the Socialist Republic of Vietnam will indemnify and undertake at all times hereafter to indemnify the Government of Australia, Australian personnel and Australian firms against all actions, proceedings, claims and demands which may be brought against them, directly resulting from the execution of their function in the Socialist Republic of Vietnam under this MOU, except where such claims arise from gross negligence or wilful misconduct of agents of the Government of Australia, Australian personnel or Australian firms. This paragraph will not apply to claims arising from traffic accidents.

## 12. Taxes on incomes

The Government of the Socialist Republic of Vietnam will exempt Australian firms and Australian personnel from income taxes or other similar taxes on income or profits, salaries, wages and other similar remuneration derived from activities performed in the Socialist Republic of Vietnam to which this MOU applies.

## 13. Project supplies and professional and technical material

1. Unless otherwise decided by the two governments, ownership of project supplies rests with the Government of the Socialist Republic of Vietnam.
2. In respect of project supplies and professional and technical material imported from outside or procured within the Socialist Republic of Vietnam under this MOU, the Government of the Socialist Republic of Vietnam will:
  - (a) exempt them from payment of taxes, levies, duties, fees and other charges;
  - (b) expedite their clearance through customs;
  - (c) facilitate their movement by providing appropriate customs and wharfage facilities in the port closest to the project site;

- (d) unless provided otherwise by mutual arrangement between the two governments, provide for their expeditious transport to the site of the project; and
  - (e) exempt from or be responsible for inspection fees and storage charges and all other taxes, levies, duties, fees or charges on these project supplies purchased in or imported into the Socialist Republic of Vietnam.
3. Project supplies provided for a specific project to which this MOU applies, will be available only for the purposes of development activities and will not be withdrawn from that use without the mutual agreement of the appropriate coordinating agencies of Australia and the Socialist Republic of Vietnam. The Australian Team Leader will exercise administrative control over such supplies for the duration of the project or until both coordinating agencies agree that they may be released from the project. All matters relating to project supplies which have ceased to be used for the purposes of the project will be governed by a subsidiary arrangement.
4. Professional and technical material which has ceased to be of use for the purposes of the project will be subject to the duties, taxes, levies, duties, fees or other charges from which they were exempt unless:
- (a) re-exported; or
  - (b) disposed of to persons enjoying similar exemptions.

14. Import of personal and household effects

In respect of personal and household effects, except motor vehicles, imported into the Socialist Republic of Vietnam for the personal use of Australian personnel the Government of the Socialist Republic of Vietnam will:

- (a) exempt Australian personnel upon their first arrival in the Socialist Republic of Vietnam and for a period of six months thereafter, from taxes, levies, duties, fees and other charges on personal effects;
- (b) exempt Australian personnel assigned to work in the time Socialist Republic of Vietnam within six months from their first arrival in the Socialist Republic of Vietnam from taxes, levies, duties, fees and other charges on household effects;
- (c) expedite their clearance through customs.

15. Export of personal, professional and technical material and of personal and household effects

In respect of the export from the Socialist Republic of Vietnam of personal, professional and technical material and of personal and household effects at the end of the assignment of Australian personnel, the Government of the Socialist of Vietnam will:

- (a) exempt them from export duty or any charge levied; and
- (b) expedite their clearance through customs and other export controls.

16. Intellectual property

1. Recognising that it is desirable to use or exploit advances or discoveries which may be made in the course of a project under this MOU, the coordinating agencies will discuss:
  - (a) the equitable allocation of ownership of all intellectual property arising directly or indirectly from the project;
  - (b) the equitable licensing of such other intellectual property; and
  - (c) where it is within their power, the equitable licensing of such other intellectual property as is necessary for the utilisation of the results of the project.
2. In order to give effect to this paragraph, the coordinating agencies will have regard to relevant considerations, including:
  - (a) the intellectual contributions of each country;
  - (b) the financial contributions of each country;
  - (c) the contribution of intellectual property, materials, research effort and preparatory work of each country;
  - (d) the facilities provided by each country; and
  - (e) such other relevant considerations as the coordinating agencies may mutually determine.
3. "Intellectual property" includes the rights relating to:
  - (a) literary, artistic and scientific works, usually referred to as copyright;

- (b) inventions in all fields of human endeavour, usually referred to as patents;
- (c) scientific discoveries;
- (d) industrial designs;
- (e) trademarks, service marks, and commercial names and designations;
- (f) protection against unfair competition; and
- (g) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including any rights in computer software and mask works and intellectual activity arising solely or partly by the restraint of confidence.

4. Each Government will not, without the written approval of the other Government, make any use of any intellectual property contributed to, or arising from, this MOU or Projects under this MOU, or do anything prejudicial to the intellectual property rights of that other Government or any national of the country of that other Government.

17. Taxes, levies, duties, fees and other charges for Australian personnel

- 1. The Government of the Socialist Republic of Vietnam will facilitate the recruitment and employment by the Government of Australia or its coordinating agency or representative, of personnel required for the projects to which the MOU applies, by:
  - (a) granting exemption from income or other taxes on salaries and allowances in accordance with paragraph 11;
  - (b) granting exemption from import duties and any other charges on personal and household effects imported at the time of first taking up duty in the Socialist Republic of Vietnam or within six months in accordance with paragraph XIV;
  - (c) granting to Australian project personnel all "rights" and entitlements accorded to the aid personnel of any other country;
  - (d) expediting the issue of all documentation required for entry of and performance of work by project personnel;

(e) granting exemption from import duty or any charge levied on one motor vehicle per person if that vehicle is imported or purchased within six months of taking up duty in the Socialist Republic of Vietnam. If that motor vehicle thus imported is disposed of otherwise than to a person entitled to the same import privileges, appropriate duty shall be paid thereon. In case of such disposal, prior permission of the Vietnam customs authorities shall have been obtained.

2. Australian personnel and Australian firms will not engage in any form of employment in the socialist Republic of Vietnam other than that provided for by the terms of their contracts. Dependants of Australian personnel will not engage in any form of regular employment in the Socialist Republic of Vietnam without the prior written approval of the Government of Vietnam.

## 18. Security

The Government of the Socialist Republic of Vietnam will extend security arrangements deemed necessary by the Government of Australia to ensure the safety of the person and property of Australian personnel and their dependants and of project supplies and materials.

## 19. Remittance of funds

The Government of the Socialist Republic of Vietnam will facilitate Australian firms and Australian personnel in the repatriation of their funds in accordance with rules and procedures laid down by the Central Bank of the Socialist Republic of Vietnam and consistent with the rights and obligations of the Socialist Republic of Vietnam as a member of the International Monetary Fund.

The Government of the Socialist Republic of Vietnam, in accordance with its laws, will assist Australian firms and Australian personnel in the repatriation of their funds.

## 20. Local laws and regulations

Upon request, the Socialist Republic of Vietnam will inform and keep advised Australian firms and Australian personnel of local laws and regulations which may concern them in the performance of their duties.

Upon request, the Government of the Socialist Republic of Vietnam will inform the Government of Australia of changes to the laws and regulations of the Socialist Republic of Vietnam which may affect the manner in which this MOU is implemented.

## 21. Consultations

The two governments will, upon request by either government, consult each other regarding any matter relating to the terms of the MOU and will jointly resolve any difficulties or misunderstandings which may arise.

The two governments will hold high level consultations which will normally be held annually and alternate between the two countries. These consultations will consider and assess the contribution of development cooperation to the bilateral relationship.

## 22. Validity of previous agreements and arrangements

Any arrangements between the two governments concerning experts provided under the technical cooperation programs of the Colombo Plan, already in effect at the time of entry into effect of the MOU will remain valid.

## 23. Amendment

The two governments may decide to amend this MOU in writing.

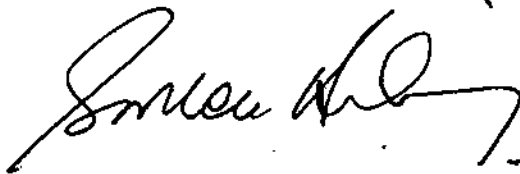
## 24. Entry into effect and duration

1. This MOU will take effect from the date of its signature. It will remain in effect until terminated by either government on six months notice in writing to the other government.
2. The responsibilities of the two governments for development activities being carried out pursuant to subsidiary arrangements and begun prior to the receipt of the termination notice referred to above will continue until completion of such development activities as if this MOU remained in effect in respect of and for the whole duration of such projects.



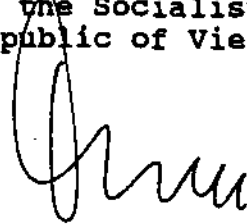
In witness thereof, the undersigned, duly authorized by their respective governments, have signed this Arrangement, done in duplicate at Canberra, this 27<sup>th</sup> day of May 1993, in English and in Vietnamese, each version being equally authentic.

For the Government of  
Australia



Gordon Bilney  
Minister for Development  
Cooperation and Pacific  
Island Affairs

For the Government  
of the Socialist  
Republic of Vietnam



Do Quoc Sam  
Minister, Chairman  
State Planning Committee

Mr. Vo Hong Phuc  
First Vice Minister  
Ministry of Planning and Investment

RE: AMENDMENT TO MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE GOVERNMENT OF AUSTRALIA  
AND  
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Dear Sir:

In that the two parties, The Government of Australia and the Government of the Socialist Republic of Vietnam signed a Memorandum of Understanding (MOU) on Development Cooperation dated 27 May, 1993;

And that, Clause 23 which reads:

"The two governments may decide to amend this MOU in writing."  
allows for either party to this Memorandum of Understanding to undertake to "amend this MOU in writing";

And that the Government of Australia would like to amend this MOU in Clause 13, section 1 to add one sentence, creating section 13, sub 1 (a). The current Clause 13, section 1 reads:

13. Project supplies and professional and technical material.

1. Unless otherwise decided by the two governments, ownership of project supplies rests with the Government of the Socialist Republic of Vietnam.

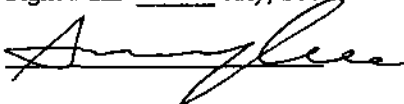
AMENDMENT TO READ:

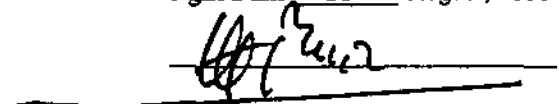
13. Project supplies and professional and technical material.

1. Unless otherwise decided by the two governments, ownership of project supplies rests with the Government of the Socialist Republic of Vietnam.

- 1 (a) Disposal of Program Support Unit assets will be undertaken in a manner that is acceptable to both Governments.

Please indicate your acceptance to this Amendment by signing both this copy and the duplicate copy attached. Please return one copy to AusAID and retain one copy for your official records.

Signed this 26 July, 2001  
  
Dr. Sun-Hee Lee  
Counsellor  
Aus-AID, Vietnam

Signed this 28 August, 2001  
  
Mr. Vo Hong Phuc  
First Vice Minister  
Ministry of Planning and Investment